IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

Madanlal.
vs.
Anar Devi and another.

S.B.CIVIL SECOND APPEAL NO.156/2006 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 6.1.2006 PASSED BY SHRI HIMANSHU RAI NAGORI, ADDITIONAL DISTRICT JUDGE, PARBATSAR IN CIVIL APPEAL DECREE NO.110/1998.

DATE OF JUDGMENT ::: 2.1.2007

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. Ranjeet Joshi, for the appellant.

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BY THE COURT:

Heard learned counsel for the appellant.

The plaintiffs filed a suit for possession on the basis of patta dated 19.3.1948 alleging that originally patta was granted by the Erstwhile State of Jodhpur.

However, the patta was lost, therefore, new patta was obtained on 19.3.1948. The plaintiffs in their plaint admitted that 15 years before filing of the suit, another patta was issued by the Gram Panchayat, Borawar despite the fact that the plaintiffs were in possession of the suit property. The patta holder sold the property and on the strength of said patta and sale deed, the defendants entered upon the property in dispute in 1976. The plaintiffs challenged the sale deed as well as patta issued subsequently by the Gram Panchayat, Borawar.

The defendants submitted written statement and pleaded that the plaintiffs were never in possession of the property nor the Jagirdar of Erstwhile State of Jodhpur had a right to grant patta. The defendants also pleaded that they purchased the property and thereafter, raised construction of the boundary wall and they are living in the property as owners of the property.

The trial court dismissed the suit of the plaintiffs by judgment and decree dated 27.8.1998 after considering the oral and documentary evidence produced by both the parties. The trial court held that the defendants proved that there was a person named Kundan Mal and he sold the property to the defendants. The trial court also observed that the plaintiffs filed suit after 16 years from the date of issuance of patta

in favour of the defendants and, therefore, the plaintiffs failed to prove that the property in question was their pattasud land.

The finding of fact recorded by the trial court was upheld by the first appellate court. Therefore, this second appeal.

Learned counsel for the appellant vehemently submitted that two courts below committed serious error of law in recognizing the subsequent patta of the land issued in favour of Kundan Mal. It is submitted that once a patta has been issued by the competent authority in favour of plaintiff's predecessor, no second patta could have been issued by any authority, therefore, in view of the earlier patta in favour of the plaintiffs and plaintiffs' predecessor, the patta set up by the defendants is of no consequence and void.

It is also submitted that the defendants encroached upon the land of the plaintiffs which has been proved by the plaintiffs by cogent evidence.

I have considered the submissions of learned counsel for the appellant and perused the reasons given by the two courts below as well as the facts of the case.

Two courts below carefully considered all the

facts and decided the question of facts on the basis of evidence and no illegality has been committed by the two courts below in arriving at the decision on question of facts. The plaintiffs failed in proving their title and possession over the property. Even if any patta was issued in favour of the plaintiffs or their predecessor, even then they lost title as they failed to protect their possession for more than 12 years.

In view of the above, no substantial question of law is involved in this appeal. Accordingly, this appeal, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya